

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LP MATTHEWS, L.L.C.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 04-1507-SLR
	)	
BATH & BODY WORKS, INC.; LIMITED	)	
BRANDS, INC.; KAO BRANDS CO.	)	
(f/k/a THE ANDREW JERGENS	)	
COMPANY); and KAO CORPORATION,	)	
	)	
Defendants.	)	

**LP MATTHEWS' DAUBERT MOTION TO STRIKE THE EXPERT  
REPORT AND EXCLUDE THE TRIAL TESTIMONY OF THE  
LIMITED DEFENDANTS' PATENT LAW EXPERT, MICHAEL H. DAVIS**

Pursuant to the Scheduling Order entered by this Court on June 9, 2005 (D.I. 39), and as set forth in the accompanying opening memorandum, plaintiff LP Matthews, L.L.C. moves to strike the expert report, opinions, and proffered trial testimony of Defendants Bath & Body Works, Inc.'s and Limited Brands, Inc.'s ("the Limited defendants") alleged patent law expert Mr. Michael H. Davis.

LP Matthews moves to strike Mr. Davis' report, opinions, and testimony because: (1) they are untimely;<sup>1</sup> (2) they ignore this Court's guidelines concerning legal expert testimony in patent cases; and (3) paragraphs 14-67<sup>2</sup>, 68-70, 73, and 75 do not meet the Supreme Court's requirements for admissibility under *Daubert*. The Limited defendants retained Mr. Davis—who purports to be a "patent law expert"—to tell the jury "about patent practices and procedures, both generally and as they relate to this case, and on various patent issues" and "certain conclusions I have reached regarding the prosecution, validity, and scope of the '062 patent...." This Court, of

<sup>1</sup> The Limited defendants served his report on March 31, 2006, over a month after the February 28, 2006 deadline for non-rebuttal expert reports. See D.I. 39, ¶ 2(c)(1).

<sup>2</sup> There are two paragraph 67s; LP Matthews moves to strike the first and to exclude the opinions in that paragraph.

course, does not permit expert testimony on patent office practices and procedures. But even if such testimony were permitted, Mr. Davis is not qualified to give it. He has never written or prosecuted a patent application, never appealed a case to the Board of Patent Appeals and Interferences or the Federal Circuit, and never examined a patent or worked at the patent office in any capacity. As such, he has no experience from which to draw upon in order to offer opinions about patent office practice and procedures. Even worse, his report presents conclusions about claim construction of technical terms, even though claim construction is the province of the Court, and despite the fact that he has no technical background. In short, his opinions are not admissible under *Daubert* or Rule 702 and they should not be presented to the jury.

The grounds for this *Daubert* motion are more fully set forth in LP Matthews' Opening Memorandum Supporting Its *Daubert* Motion to Strike the Expert Reports and Exclude the Trial Testimony of the Limited Defendants' Patent Law Expert, Michael H. Davis, filed contemporaneously herewith.

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Dated: June 22, 2006

ASHBY & GEDDES

/s/ John G. Day

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*Counsel for Plaintiff LP Matthews*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of June, 2006, the attached **LP MATTHEWS' DAUBERT MOTION TO STRIKE THE EXPERT REPORT AND EXCLUDE THE TRIAL TESTIMONY OF THE LIMITED DEFENDANTS' PATENT LAW EXPERT, MICHAEL H. DAVIS** was served upon the below-named counsel of record at the address and in the manner indicated:

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*/s/ John G. Day*

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John G. Day